(4)

No. 91-1030

Supreme Court, U.S.
FILED
JUN 4 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

PAMELA WITHROW,

Petitioner,

v.

ROBERT ALLEN WILLIAMS, JR.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF *AMICUS CURIAE* OF THE STATES OF CALIFORNIA, ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MASSACHUSETTS, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

I. Where the petitioner has had a full and fair opportunity to raise a *Miranda* claim in state court, should collateral review of the same claim on a habeas corpus petition be precluded?

II. Whether the federal district court could grant habeas relief on an involuntary confession claim which had not been fairly presented to the state courts?

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INTEREST OF *AMICI*

This case presents fundamental questions concerning the administration of justice implicated by the unique dual roles of our state and federal courts. Since the States must bear most of the costs of federal habeas review, the

amici have an interest in minimizing these costs by avoiding redetermination of *Miranda* claims in federal court where a full and fair opportunity to litigate has already been furnished in state court.

This brief is submitted by *amici* through their respective Attorneys General in accordance with Rule 37.5 of the Rules of the Supreme Court.

STATEMENT OF FACTS AND PROCEEDINGS

After a two-day bench trial, respondent Robert Allen Williams was convicted and sentenced for two counts of first-degree murder and one count of felony firearm charges in the Michigan Circuit Court of Wayne County. This conviction stemmed from his involvement in the murder of two males who had been found shot in a parked car on April 6, 1985.

Respondent Williams was questioned by police on four occasions: twice on April 10, 1985 and once each on April 11 and 12, 1985. The April 10th sessions were recorded on audiotape; the April 12th session was recorded on videotape and transcribed.

During the first questioning session at the station on April 10th, respondent Williams began to implicate himself after about 40 minutes. At this point, the questioning stopped and respondent was advised of and waived his *Miranda* rights and continued to respond to questions. Respondent Williams received *Miranda* warnings prior to the beginning of the remaining sessions during which further inculpatory statements were made.

The respondent filed a motion to suppress all the statements. At a suppression hearing, the state trial court received testimony from the respondent and the detective sergeant involved and reviewed the tape. The court excluded statements made on April 11th and 12th under Michigan case law. As to the first session on April 10th, the trial court found that respondent was not "in custody" and that once he was the focus of the investigation, he was advised of his rights. With regard to the second session on April 10th, the court found the respondent was advised of his rights and waived them and the statements were not improperly obtained. Only the April 10th statements were admitted at trial.

On appeal, the Michigan Court of Appeals held, after reviewing the record and listening to the tape, that the trial court's factual finding on the "custody" issue was not clearly erroneous and that respondent was not in custody until he was advised of his rights. *People v. Williams*, 171 Mich.App. 234, 429 N.W.2d 649 (1988). The Michigan Supreme Court and this Court declined discretionary review. *People v. Williams*, 432 Mich. 913, 440 N.W. 2d 416 (1989); *Williams v. Michigan*, 493 U.S. 956 (1989).

In considering respondent's *pro se* habeas petition, the U.S. District Court did not hold an evidentiary hearing or oral argument but did review the one transcript and the tapes of *all* the questioning sessions (including those which had been excluded by the state trial court). After concluding that an "independent determination" was warranted, the district court found that respondent Williams had been "in custody" during the first session of questioning. As to the *Mirandized* statements, the court held they were involuntary since they were induced by

improper promises of leniency, even though this issue had never been fairly presented in state court. The district court granted the petition for writ of habeas corpus. On appeal, the Sixth Circuit affirmed, *Williams v. Withrow*, 944 F.2d 284 (CA6 1991), and denied rehearing. This Court granted writ of certiorari. *Withrow v. Williams*, 112 S.Ct. 1664, 118 L.Ed.2d 386 (1992).

SUMMARY OF ARGUMENT

The district court greatly exceeded the limited scope of federal habeas corpus review here. In addition to disregarding the state court rulings by making its own "independent determination," the district court reviewed all the tapes and one transcript, which included evidence which had been suppressed by the state trial court.

An assessment of the costs and benefits of the judicially-established *Miranda* exclusionary rule cannot justify the relitigation of *Miranda* claims on collateral review after a defendant has already had a full and fair opportunity to litigate this issue in state court. The broad sweep of the *Miranda* rule countenances the exclusion of probative evidence. Significantly, the prophylactic *Miranda* rule does not confer a "personal constitutional right" and is not dictated by the Fifth Amendment. Further, the reasonable and good faith application of the rule in state court, which is subject to direct review to this Court, fulfills the deterrent function.

This Court should extend the *Stone v. Powell* standard to *Miranda* claims where a full and fair opportunity to

litigate in state court has been provided. Otherwise, substantial, unjustified costs to our criminal justice system will continue to be incurred and borne largely by the States. These costs include: allowing federal habeas courts to disregard or disrespect the co-equal status of state courts, their ability to apply the *Miranda* rule, and the state court's rulings; the exclusion of reliable evidence; an intrusion into matters of State sovereignty; an unnecessary consumption of limited judicial resources; a lack of repose in the enforcement of presumptively valid state court convictions; and an undermining of public confidence in the ability of our criminal justice system to resolve primary criminal justice disputes. The *Stone v. Powell* standard best balances the competing criminal justice interests at stake and minimizes the costs to our criminal justice system of relitigating *Miranda* claims on collateral review.

The Court need not consider the voluntariness claim, as it was not exhausted in state court. If the Court addresses the merits of this claim, the State of Michigan may be disadvantaged by having been deprived of an opportunity to develop subsidiary facts in state court which would be entitled to the presumption of correctness on federal habeas review.

ARGUMENT

I. THE *STONE V. POWELL* STANDARD SHOULD EXTEND TO *MIRANDA* CLAIMS

A. The District Court Completely Disregarded the Fully and Fairly Litigated State Court *Miranda* Ruling

Respondent Williams received a full and fair hearing of his *Miranda* claim before the state trial and appellate court. In issuing the writ of habeas corpus, the U.S. District Court misunderstood its function on federal habeas review as enabling it to sit in "review" of the state court judgment. The federal court exceeded the limited scope of habeas review by deciding it was compelled to "make an *independent determination* of whether or not petitioner was in custody during interrogation session one." (Emphasis added.) Because no evidentiary hearing or oral argument was held, the district court apparently made this *de novo* determination based upon its *independent* "analysis of the tape recording." In rendering its rulings, the district court not only disregarded the considered rulings of the state court, *see* note 9, *infra*, but also appears to have been influenced by considering evidence which had been suppressed by the state court and was not part of the state record.

B. Application of the *Stone* Standard Best Balances the Competing Criminal Justice Interests At Stake and Minimizes the Costs

After assessing the costs and benefits of the Fourth Amendment exclusionary rule considered on collateral review, this Court held in *Stone v. Powell*, that "a federal

court need not apply the exclusionary rule on habeas review of a fourth amendment claim absent a showing that the state prisoner was denied an opportunity for a full and fair litigation of that claim at trial and in direct review." 428 U.S. 465, 495 n.37 (1976). The federal proceedings below provide a textbook example of why federal habeas resources should not be expended in resolving analogous claims under the *Miranda* exclusionary rule. *Miranda v. Arizona*, 384 U.S. 436 (1966). Unless this Court reverses the lower federal courts, the State of Michigan will have to consider the practicalities of retrying respondent, more than seven years after the murders occurred.

1. The Prophylactic *Miranda* Rule Does Not Confer A "Personal Constitutional Right"

As a starting point, in *Stone*, this Court observed that the Fourth Amendment exclusionary rule "is not a personal constitutional right," since it is a judge-made remedy "designed to safeguard Fourth Amendment rights generally through its deterrent effect." 428 U.S. at 486 (citation omitted); *id.* at 495 n.37. This same rationale applies to claims based upon the *Miranda* rule.

Simply put, failure to satisfy the preventative requirements of *Miranda* does not result in a constitutional violation cognizable on federal habeas review. The Fifth Amendment, which contains no reference to this remedial device, provides "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." As this Court has previously observed, "The

Miranda exclusionary rule . . . serves the Fifth Amendment and sweeps more broadly than the Fifth Amendment itself. It may be triggered even in the absence of a Fifth Amendment violation."[1]

An application for a writ of habeas corpus by a state prisoner may be entertained in federal court "only on the ground that [the prisoner] is in custody in violation of the *Constitution* or laws or treaties of the United States." 28 U.S.C. § 2254(a) (emphasis added); *see also Estelle v. McGuire*, 502 U.S. ___, 112 S.Ct. 475, 116 L.Ed.2d 385, 396 (1991). Because the *Miranda* rule is a prophylactic, judge-made remedy which is not mandated by the Constitution, claims based upon *Miranda* do not meet the jurisdictional prerequisite for federal habeas review. *Accord Butler v. McKellar*, 494 U.S. 407, 110 S.Ct. 1212, 1217-18 (1990) (holding the rule in *Arizona v. Roberson*, 486 U.S. 675 (1988) constitutes a "new rule" and does not satisfy either of the two exceptions under the *Teague* doctrine for retroactive application).

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[1] *Oregon v. Elstad*, 470 U.S. 298, 306 (1985); *see also Duckworth v. Eagan*, 492 U.S. 195, 209 (1989) (O'Connor, J., concurring) ("The *Miranda* rule is not, nor did it ever claim to be, a dictate of the Fifth Amendment itself."); *New York v. Quarles*, 467 U.S. 649, 654 (1984); *Michigan v. Tucker*, 417 U.S. 433, 444-46 (1974); *accord Solem v. Stumes*, 465 U.S. 638, 644 n.4 (1984).

2. Any Incremental Benefits of Reviewing *Miranda* Claims On Collateral Review Are Outweighed by Substantial Costs to our Criminal Justice System

The *Stone* holding was premised on the Court's "weighing [of] the utility of the exclusionary rule against the costs of extending it to collateral review." *Stone*, 428 U.S. at 489. This Court, even on *direct* review, has already employed a similar cost-benefit analysis to determine when the *Miranda* exclusionary rule should be applied. Consequently, even on *direct* review, the *Miranda* exclusionary rule is not an absolute or automatic rule of exclusion.[2] If the benefits of the prophylactic *Miranda* rule are outweighed by special considerations under some circumstances on *direct* review, the question becomes whether our criminal justice system can afford the social costs resulting from the enforcement of the *Miranda* rule on *collateral* review.

Like the Fourth Amendment exclusionary rule, the primary purpose of the *Miranda* rule is to deter police

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[2] *See Quarles*, 467 U.S. at 657 ("situation posing a threat to the public safety *outweighs* the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination") (emphasis added); *Oregon v. Haas*, 420 U.S. 714, 723 (1975) (statements inadmissible in prosecution case in chief but admissible for impeachment); *Tucker*, 417 U.S. at 448-49 (testimony of third party not barred by *Miranda* rule); *Harris v. New York*, 401 U.S. 222 (1971) (statements used for impeachment purposes); *see also Duckworth*, 495 U.S. at 210 (O'Connor, J., concurring) (citing cases where the "deterrent effect" of the *Miranda* rule "is minimal and is outweighed by other competing interests"); *Brewer v. Williams*, 430 U.S. 387, 424, 427 (1977) (Burger, C.J., dissenting) (applying balancing test).

conduct that may lead to a potential constitutional violation. *Compare Stone*, 428 U.S. at 486-87 *with Elstad*, 470 U.S. at 308; *Haas*, 420 U.S. at 722-23; *Tucker*, 417 U.S. at 446-47. The deterrence objective is fulfilled by the good faith and reasonable application of the rule on direct review. The police are put on notice that their conduct may be judicially reviewed by the mere opportunity that a defendant has to request a suppression hearing in state court. Moreover, when, as here, a suppression hearing is held by the state court, the police conduct has already been scrutinized. *Cf. Stone*, 428 U.S. at 493 ("The view that the deterrence of Fourth Amendment violations would be furthered rests on the dubious assumption that law enforcement authorities would fear that federal habeas review might reveal flaws in a search or seizure that went undetected at trial and on appeal."). Once there has been a full and fair opportunity to litigate a *Miranda* claim in state court, not only are there diminishing returns to the deterrence objective by relitigating the application of the *Miranda* rule on collateral review in federal court, but any such returns cannot be justified in terms of the cost to the criminal justice system.[3]

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[3] *See Duckworth*, 492 U.S. at 211 (O'Connor, J., concurring); Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 163 (1970) [hereinafter Friendly, *Is Innocence Irrelevant?*]; *cf. Vasquez v. Hillery*, 474 U.S. 254, 266-67 (1986) (O'Connor, J., concurring) (assessing incremental deterrent effect of collateral review of alleged discriminatory exclusion from the grand jury); *Stone*, 428 U.S. at 487, 493-94 (assessing incremental deterrent effect of Fourth Amendment exclusionary rule).

The efficacy of the deterrence function also depends on the timing of the review and application of the rule. Thus, the impact of deterrence will be the greatest where the rule is swiftly and certainly applied, *i.e.*, on direct review, not years later when the police officers and even state court judges involved with the case may no longer hold the same positions. Finally, it cannot be overlooked that any deterrent effect promoted by federal court review is maintained by the fact that the state court proceedings are always subject to direct review to this Court. In fact, many of the *Miranda* line of cases have been decided by this Court on direct review.

Another concern noted by the *Stone* Court is the impact of the exclusionary rule on the truth-finding process. 428 U.S. at 490. Importantly, the broad sweep of the bright-line *Miranda* rule is cast with disregard to the reliability of the statements or evidence in issue. *See Duckworth*, 492 U.S. at 210 (O'Connor, J., concurring) (noting that the *Miranda* rule is "unrelated to the truth seeking function of the criminal trial"); *Quarles*, 467 U.S. at 655 n.5 (noting "the failure to provide *Miranda* warnings in and of itself does not render a confession involuntary"); *Solem*, 465 U.S. at 644-45. Indeed, the "Fifth Amendment itself does not prohibit all incriminating admissions." *Quarles*, 467 U.S. at 654. Further, a *Miranda* claim raised as part of a collateral challenge will typically be unrelated to the central question of guilt or innocence. *Cf. Stone*, 428 U.S. at 490 & 492 n.31. Here, for example, the conclusion of the district court's memorandum opinion notes that habeas relief was granted independent of the accuracy of the inculpatory statements or of respondent's guilt or innocence. In this case, the reliability of the statements in question has not been challenged.

3. The Costs of Habeas Review: Impact on Comity

In evaluating whether claims based upon the prophylactic *Miranda* rule should be subject to collateral review, the costs of habeas review must be taken into account, including: (1) the impact on federal-state relations; (2) the interest in finality; and (3) other criminal justice system costs. For several reasons, "*most of the price* paid for federal review of state prisoner claims is *paid by the States*," *Coleman v. Thompson*, 501 U.S. ___, 111 S.Ct. 2546, 2559, 115 L.Ed.2d 640 (1991) (emphasis added):

a. Collateral Nature of Federal Habeas Review

By tradition and history, the primary obligation for the definition and enforcement of criminal laws in our federalism form of government resides with the States. *See Engle v. Isaac*, 456 U.S. 107, 128 (1982); *Palmore v. United States*, 411 U.S. 389, 402 (1973); *cf. Younger v. Harris*, 401 U.S. 37 (1971). The state trial court therefore not only provides what should be the "main event" in our criminal justice system, *Wainwright v. Sykes*, 433 U.S. 72, 90 (1977), but also holds "the initial responsibility for vindicating constitutional rights." *Isaac*, 456 U.S. at 128.

Under our current criminal justice system, two opportunities exist for federal court review of state court decisions. *First*, a state conviction and sentence may be directly reviewed by this Court when a petition for certiorari is filed challenging the state court ruling. *See Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987); 28 U.S.C.

§ 1257 (appellate jurisdiction over cases arising in state courts). *Second*, normally after exhausting state remedies, a state prisoner may seek federal review of his state conviction and sentence by filing a petition for writ of habeas corpus, pursuant to the federal habeas corpus statute, 28 U.S.C. § 2254.[4]

This Court has acknowledged a significant distinction between the role and function of direct and collateral review. Consequently, not all rules are, or should be, identically applied on direct and collateral review.[5] In

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[4] Significantly, federal habeas review is not a constitutional obligation but a statutory one. In fact, for the first ninety-one years of our nation's history, there was no federal collateral review of state court decisions, until Congress enacted the federal habeas corpus statute. *See* Act of Feb. 5, 1867, Ch. 28, § 1, 14 Stat. 385 (codified at 28 U.S.C. § 2254).

[5] *See, e.g., Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion) (general doctrine against retroactive application of "new rules" on collateral review); *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (no federal constitutional right to counsel on collateral review); *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977) ("The burden of demonstrating that an erroneous instruction [which was not objected to at trial] was so prejudicial that it will support a collateral attack on the constitutional validity of a state court's judgment is even greater than the showing required to establish plain error on direct appeal."); *Stone*, 428 U.S. at 495 n.37 (Fourth Amendment exclusionary rule claims barred on habeas review where there is a full and fair opportunity to litigate in state court); *see also Rose v. Lundy*, 455 U.S. 509, 543-44 (1982) (Stevens, J., dissenting) (categorizing four types of constitutional errors and concluding not all should be subject to collateral review).

maintaining this distinction, this Court has reiterated that "direct appeal is the *primary* avenue for review of a conviction or sentence. . . . The role of federal habeas proceedings, while important in assuring that constitutional rights are observed, is *secondary* and *limited*. Federal courts are not forums in which to *relitigate* state trials."[6] Federal habeas review should be preserved for claims rooted in the Constitution but should not be expended to consider whether prophylactic rules have been violated. The *Miranda* rule should be fully enforced on direct review; the costs of enforcing the rule on collateral review cannot be justified.

b. Co-Equal Status of State Courts

In our dual criminal justice system, state courts are not inferior to federal courts in applying constitutional principles.[7] The federal habeas statute is not a vehicle for

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[6] *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983) (emphasis added); *see also Duckworth*, 492 U.S. at 212 (O'Connor, J., concurring); *Isaac*, 456 U.S. at 127 ("Liberal allowance of the writ, moreover, degrades the prominence of the trial itself."); *Mackey v. United States*, 401 U.S. 667, 682-83 (1971) (Harlan, J., concurring and dissenting); Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 524 (1963) [hereinafter Bator, *Finality in Criminal Law*].

[7] The competency of state courts in applying federal constitutional principles has been repeatedly noted. *See Sawyer v. Smith*, 497 U.S. 227, 110 S.Ct. 2822, 2831, 111 L.Ed.2d 193, 210-11 (1990); *Swain v. Pressley*, 430 U.S. 372, 383 (1977); *Stone*, 428 U.S. at 493 n.35; *see also Rose v. Mitchell*, 443 U.S. 545, 579-80 (1979) (Powell, J., concurring); *Palmore*, 411 U.S. at 407, 410; O'Connor, *Trends in the Relationship between the Federal and State Courts from the Perspective of a State Court Judge*, 22 Wm. & Mary L. Rev. 801, 814-15 (1981); Bator, *Finality in Criminal Law*, at 451, 509.

allowing lower federal courts to determine whether, in their view, state courts were "correct" in their determination of facts and application of law. *Cf. Butler*, 494 U.S. at ___, 110 S.Ct. at 1271 (The "new rule" doctrine of *Teague* and its progeny "validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions."). To paraphrase Justice Jackson, federal courts "are not final because [they] are infallible, but [they] are infallible only because [they] are final." *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring).

Because of the inherent "friction" resulting from this overlapping judicial system, *see Sumner v. Mata*, 449 U.S. 539, 547, 550 (1981); *Stone*, 428 U.S. at 491 n.31, this Court has recognized deference and respect must be afforded to state courts as the primary and first tribunals of criminal law enforcement in our criminal justice system.[8] However, independent or *de novo* federal habeas review of *Miranda* claims which have already been considered in state court disrespects the ability of state courts to apply

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[8] In a number of areas, Congress and this Court have established several principles to minimize this friction in federal-state relations in the administration of criminal justice. *See, e.g., Coleman*, 501 U.S. ___, 111 S.Ct. at 2554 (applying independent and adequate state ground doctrine); *Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion) (general doctrine against retroactive application of "new rules" on collateral review); *Rose v. Lundy*, 455 U.S. 509, 516 (1982) (exhaustion doctrine under 28 U.S.C. §§ 2254(b), (c)); *Sumner*, 449 U.S. at 550 (presumption of correctness to state court findings of fact under 28 U.S.C. § 2254(d)).

the *Miranda* exclusionary rule. In fact, as this case demonstrates, independent federal review and relitigation of these matters relegates state courts to mere fact-finding and legal-ruling commissions, whose decisions are merely tentative and subject to ultimate review and resolution by the lower federal courts.

c. Appropriate Forum: The Interest in Judicial Economy

Given the primary role of state courts in our criminal justice system, and given the identical obligation of state and federal courts to apply constitutional principles, respect must also be due the state court as the most appropriate forum to resolve issues in the first instance. For example, regardless of whether the "custody" issue is deemed a question of fact or mixed question of law and fact,[9] the resolution of this issue in this case hinged in

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[9] The district court noted, without citing to any authority, that "the overall question of whether petitioner was in custody is a mixed question of fact and law which requires an *independent federal determination*." (Emphasis added.) Even assuming *arguendo* that the state finding was subject to the statutory presumption of correctness under 28 U.S.C. § 2254(d), the court summarily ruled that "this particular state court finding is so completely devoid of support in the record that the presumption is overcome. 28 U.S.C. § 2254(d)(8)." Contrary to established precedent, no explanation was provided for this alternative holding.

There is a split of authority among the circuits on the proper standard of review on the question of whether an individual is "in custody" within the meaning of *Miranda*, for those cases originating in federal court. *See, e.g., United States*

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substantial part on matters within the unique province of the state trial court. As this Court has observed, "determinations of demeanor and credibility . . . are peculiarly within a trial judge's province" and "were entitled to deference even on direct review; [t]he respect paid such findings in a habeas proceeding certainly should be no less." *Wainwright v. Witt*, 469 U.S. 412, 428 (1985) (citation omitted). In this case, the lower federal courts disrespected the state court's primary role in resolving these issues. At the suppression hearing, for example, the state trial court considered all the tapes and the testimony of respondent and the police officer involved. If the "custody" issue was a question of fact, *see* note 9, *supra*, neither the district court nor the Sixth Circuit explained

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v. Lennick, 917 F.2d 974, 977 (CA7 1990) (noting split); *United States v. Jorgensen*, 871 F.2d 725, 734 n.3 (CA8 1989) (Heaney, J., dissenting) (same).

In the absence of clear U.S. Supreme Court precedent, several courts, including the Sixth Circuit, treat the issue as a question of fact, subject to the deferential clear error standard. See *United States v. Lanni*, 951 F.2d 440, 443 (CA1 1991); *United States v. Carter*, 884 F.2d 368, 371 (CA8 1989); *United States v. Chalan*, 812 F.2d 1302, 1307 (CA10 1987), *cert. denied*, 488 U.S. 983 (1988); *United States v. Mahar*, 801 F.2d 1477, 1500 n.38 (CA6 1986); *United States v. Wauneka*, 770 F.2d 1434, 1438 (CA9 1985).

A few courts have treated this question as a mixed question of law and fact. *See United States v. Hocking*, 860 F.2d 769, 772 (CA7 1988); *United States v. Rioseco*, 845 F.2d 299, 302 (CA11 1988); *United States v. Calisto*, 838 F.2d 711, 717-18 (CA3 1988).

Finally, at least one circuit has reviewed the issue *de novo* as a question of law. *See United States v. Baird*, 851 F.2d 376, 379 (CADC 1988).

why the state court finding of fact was not entitled to the traditional presumption of correctness, contrary to established precedent. *See Sumner*, 449 U.S. at 549, 551; *see also Burden v. Zant*, 498 U.S. ___, 111 S.Ct. 862, 112 L.Ed.2d 962, 968 (1991); 28 U.S.C. § 2254(d).

Most importantly, such issues should be fully developed in the state court. To the extent that such factual questions are raised, "ensuring that full factual development of a claim takes place in state court *channels* the resolution of the claim to the *most appropriate forum*. The state court is the appropriate forum for resolution of factual issues in the first instance, and creating incentives for the deferral of fact finding to later federal-court proceedings can only degrade the accuracy and efficiency of judicial proceedings." *Keeney v. Tamayo-Reyes*, No. 90-1859, 60 U.S.L.W. 4339, 4341 (May 4, 1992) (emphasis added).

d. Intrusion into State Sovereignty Interests

At issue in every federal habeas proceeding is the enforcement of a state criminal law and a presumptively final state court conviction and sentence. As this case illustrates, the sovereign power of the States to enact substantive criminal laws is denied and frustrated pending federal resolution of habeas claims which have already been litigated. *See generally McCleskey v. Zant*, 499 U.S. ___, 111 S.Ct. 1454, 113 L.Ed.2d 517, 543 (1991); *Teague*, 489 U.S. at 309 (plurality opinion); *Stone*, 428 U.S. at 491 n.31.

In order to ensure that federal courts respect the State's sovereign interests, federal courts must first afford

state courts the opportunity to: (1) protect the integrity of their processes; (2) correct any errors in State proceedings; (3) apply independent State grounds for resolution; and (4) entertain in the first instance the enforcement of State substantive criminal laws. *See* notes 7 & 8, *supra*. However, even the operation of these accepted principles does not preclude the intrusion of federal courts into State sovereign matters. For example, sovereign interests were disregarded by the federal court here when it considered evidence which had already been suppressed under Michigan case law, consistent with the independent and adequate State ground doctrine. This use of limited federal judicial resources cannot be justified.

4. Interest in Finality

Each additional level of independent or *de novo* review to some extent disparages the prior proceeding and leaves the preceding judgment in an unsettled or temporary state. Until finality is attained, there can be no justice.[10] This is particularly true where, as here, a state court has considered a *Miranda* claim at the 1985 suppression hearing which has in turn been reviewed by the state

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[10] *See McCleskey*, 499 U.S. ___, 111 S.Ct. 1454, 113 L.Ed.2d at 542 ("Neither innocence nor just punishment can be vindicated until the final judgment is known."); *see also Teague*, 489 U.S. at 309 (plurality opinion); *Stone*, 428 U.S. at 491 n.31; *Mackey*, 401 U.S at 683, 690-91 (Harlan, J., concurring and dissenting); Friendly, *Is Innocence Irrelevant?*, at 147; Bator, *Finality in Criminal Law*, at 450-51; *accord In re Blodgett*, 112 S.Ct. 674, 116 L.Ed.2d 669, 674-75 (1992) (duty of federal habeas court to provide prompt resolution).

appellate court. Under these circumstances, a state court has done all it can do after it has reasonably and in good faith applied the law and rendered its findings of fact. *Cf. Butler*, 494 U.S. at ___, 110 S.Ct. at 1271; *United States v. Leon*, 468 U.S. 897, 918-19 (1984). Notwithstanding this expenditure of State judicial and prosecutorial resources and a presumptively final state conviction, repose has not yet been attained in this case, as all prior proceedings are still subject to resolution in this federal habeas corpus proceeding. *Duckworth*, 492 U.S. at 209 (O'Connor, J., concurring). Correspondingly, the rehabilitative interest of the criminal justice system is frustrated by this delay. *Sanders v. United States*, 373 U.S. 1, 24-25 (1963) (Harlan, J., dissenting).

5. Other Related Factors and Costs of Federal Habeas Review

The federal habeas corpus process taxes our criminal justice system in other significant ways. Duplicative litigation in federal court on identical issues, on which there was a full and fair opportunity to litigate in state court, consumes precious and limited judicial resources on collateral issues unrelated to guilt or innocence.[11]

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[11] *See Tamayo-Reyes*, No. 90-1859, 60 U.S.L.W. at 4341; *McCleskey*, 113 L.Ed.2d at 543 (noting "heavy burden on scarce federal judicial resources" which impacts the ability "of the system to resolve primary disputes"); *Stone*, 428 U.S. at 491 n.31 (noting impact of habeas review on "the most effective utilization of limited judicial services"); *Schneckloth v. Bustamonte*, 412 U.S. 218, 261 (1973) (Powell, J., concurring) ("After all, the resources of our system are finite: their overextension jeopardizes the care and quality essential to fair adjudication.").

In order to defend a presumptively valid state court judgment, *Barefoot*, 463 U.S. at 887, substantial State resources must be expended in the federal forum on habeas review, often years after the "main event," and may also be required for retrial in the event habeas relief is granted. The outcome and accuracy of a second state trial may turn on the reliability and availability of any remaining evidence. As Justice Harlan wrote, the "very act of trying *stale facts* may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first." *Mackey*, 401 U.S. at 691 (Harlan, J., concurring and dissenting) (emphasis added); *see also McCleskey*, 113 L.Ed.2d at 542; Friendly, *Is Innocence Irrelevant?*, 38 U. Chi. L. Rev. at 147.

Finally, perhaps the greatest social cost of all is the impact on public confidence in our criminal justice system, which is undermined by a process which countenances rounds of relitigation and accompanying delay. In discussing the habeas corpus process, Justice Powell wrote, "It is this paradox of a system, which so often seems to subordinate substance to form, that increasingly provokes criticism and lack of confidence." *Schneckloth*, 412 U.S. at 275 (Powell, J., concurring); *see also Stone*, 428 U.S. at 491 (noting concern over "generating disrespect for the law and administration of justice").

6. Conclusion

Against these substantial costs to our criminal justice system, which must be largely borne by the States, the sanction of the *Miranda* exclusionary rule on collateral review cannot be justified. As Judge Friendly has written,

"collateral attack on criminal convictions carries a serious burden of justification." Friendly, *Is Innocence Irrelevant?*, at 146. That burden cannot be met here. This Court should hold that the *Miranda* exclusionary rule, a judicially crafted remedial device, should not apply on collateral review, subject only to a showing that the petitioner was foreclosed from an opportunity to fully and fairly litigate this claim. *Cf. Stone*, 428 U.S. at 495 n.37.

7. Lower Federal Court Opinions

Respondent Williams may try to argue that lower federal courts have consistently refused to extend the *Stone* doctrine to *Miranda* claims. However, an examination of these decisions shows that lower federal courts have not given full consideration to the merits of this argument, simply deferring to the higher authority of this Court.[12] These early precedents have also not taken into account the more recent habeas jurisprudence of this Court, which has shown a unique sensitivity to the comity and federalism concerns implicated by the federal habeas corpus process.

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[12] For example, some courts have summarily declined, without full consideration, to extend the *Stone* doctrine to *Miranda* claims on habeas review. *See Patterson v. Warden*, 624 F.2d 69, 70 (CA9 1980) (per curiam) (summarily noting *Stone* "has not been so extended"); *Wilson v. Henderson*, 584 F.2d 1185, 1189 (CA2 1978), *cert. denied*, 442 U.S. 945 (1979).

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II. THE VOLUNTARINESS ISSUE

A. Unexhausted Claim

The application of the *Stone* standard to *Miranda* claims does not necessarily mean that federal habeas

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Other courts have questioned their ability to extend *Stone* to *Miranda* claims in light of prevailing U.S. Supreme Court or other precedent, concluding that the issue was best left for resolution by this Court. *See, e.g., DeAngelo v. Wainwright*, 781 F.2d 1516, 1518 (CA11) (expressing concerns over implicitly overruling *Miller v. Fenton*, 474 U.S. 104 (1985), providing for independent determination of the voluntariness of confessions), *cert. denied*, 479 U.S. 953 (1986); *Jarrell v. Balkcom*, 735 F.2d 1242, 1251 (CA11 1984) ("Despite [the] similarities [between *Miranda* and Fourth Amendment exclusionary rule claims], extension of *Stone* beyond its fourth amendment roots would be a major departure from established case law."), *cert. denied*, 471 U.S. 1103 (1985); *McCown v. Callahan*, 726 F.2d 1, 5 (CA1) (Because no court has extended *Stone* beyond the Fourth Amendment, "[p]rudence suggests that this controversial question be left, if possible, to the Supreme Court to decide."), *cert. denied*, 469 U.S. 839 (1984); *White v. Finkbeiner*, 687 F.2d 885, 890 & n.16 (CA7 1982) ("Clearly, even if we were so inclined, we have no authority implicitly to overrule or limit these Supreme Court decisions," including *Brown v. Allen*, 344 U.S. 443 (1953), permitting relitigation on federal habeas review of matters raised in state court), *vacated on other grounds*, 465 U.S. 1075 (1984); *Harryman v. Estelle*, 616 F.2d 870, 872 n.3 (CA5) (en banc) (noting the U.S. Supreme Court had an opportunity to reach this issue in *Brewer v. Williams*, 430 U.S. 387 (1977), but declined to do so), *cert. denied*, 449 U.S. 860 (1980); *Wilson*, 584 F.2d at 1189 (noting "Supreme Court has thus far carefully confined the effect of *Stone* to Fourth Amendment claims"); *United States ex rel. Henne v. Fike*, 563 F.2d 809, 812 (CA7 1977) (per curiam) (noting to date the U.S. Supreme Court had

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review would be unavailable for *all* claims predicated upon alleged involuntary confessions. *See, e.g., Teague*, 489 U.S. at 313-14 (noting habeas review should be available, *inter alia*, to consider claims "that the conviction was

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confined the *Stone* rule to Fourth Amendment claims), *cert. denied*, 434 U.S. 1072 (1978); *Berg v. Morris*, 483 F. Supp. 179, 184 n.3 (E.D. Cal. 1980) (noting the extension of *Stone* "is severely undermined by" recent Supreme Court decisions); *Cannistraci v. Smith*, 470 F. Supp. 586, 590 (S.D.N.Y. 1979) (noting other courts have not extended *Stone* outside the Fourth Amendment).

Other cases have merely concluded the issue was closed in light of prior circuit court precedent. *See, e.g., Hinman v. McCarthy*, 676 F.2d 343, 349 (CA9 1982) (citing brief *Patterson v. Warden*, 624 F.2d 69 (CA9 1980) (per curiam), *cert. denied*, 459 U.S. 1048 (1982)); *DeAngelo*, 781 F.2d at 1518 (citing *Jarrell v. Balkcom*, 735 F.2d 1242, 1251 (CA11 1984) (declining to extend *Stone* to *involuntary* confession claims, but noting similarity of *Miranda* and Fourth Amendment claims)).

In some cases, courts have found it unnecessary to resolve the issue as presented or disposed of the case on narrower or alternative grounds. *See Bunch v. Thompson*, 949 F.2d 1354, 1363 n.2 (CA4 1991); *White v. Finkbeiner*, 611 F.2d 186, 188-89 & n.9 (CA7 1979), *vacated on other grounds*, 451 U.S. 1013 (1981); *White v. Finkbeiner*, 570 F.2d 194, 200-201 & n.2 (CA7 1978); *Kennedy v. Pinkney*, 473 F. Supp. 1279, 1283 (C.D. Ill. 1979).

In other cases, courts have declined to consider the issue as improperly preserved for appellate review. *See Terrovona v. Kincheloe*, 912 F.2d 1176, 1179 n.9 (CA9 1990), *cert. denied*, 111 S.Ct. 1631 (1991); *Towne v. Dugger*, 899 F.2d 1104, 1111 n.3 (CA11 1990), *cert denied*, 111 S.Ct. 536 (1990); *Harryman*, 616 F.2d at 872 n.3; *Fike*, 563 F.2d at 812 (noting, *inter alia*, the "potentially far-reaching issue" had been raised belatedly as an afterthought).

based on a confession extorted from the defendant by brutal methods") (emphasis added) (citing *Rose*, 455 U.S. at 544 (Stevens, J., dissenting); *Miller v. Fenton*, 474 U.S. 104 (1985).

However, based upon the record before the Court, it may not be necessary to resolve this issue at this juncture. As a separate ground for relief, the district court held that *Mirandized* statements were induced by improper promises of leniency. Because this issue appears to have never been fairly presented in state court, this Court might decide to remand this aspect of the case for a determination on whether the voluntariness claim was properly exhausted. *See Castille v. Peoples*, 489 U.S. 346, 351 (1989) (noting "fair presentation" requirement); *Rose*, 455 U.S. at 518 (noting the exhaustion doctrine is "principally designed to protect the state court's role in the enforcement of federal law and prevent disruption of state judicial proceedings").

B. Merits

On the merits, *amici* defer in substantial part to the discussion of the voluntariness issue contained in the parties' briefs. If the Court decides to consider the merits of the voluntariness issue, the *amici* wish to emphasize that consideration of this claim in federal court for the first time places the State at a significant disadvantage. As this Court noted in *Miller*, "subsidiary factual questions" on the issue of voluntariness are entitled to the presumption of correctness under 28 U.S.C. § 2254(d). 474 U.S. at 112; *see also Elstad*, 470 U.S. at 318 (noting factual issues in determining whether a subsequent statement

after *Miranda* warnings was voluntary); *cf. Schneckloth*, 412 U.S. at 226 (noting voluntariness factors in Fourth Amendment context). Because this claim was never fairly presented to the state courts, the State of Michigan did not receive fair notice to defend against this claim. *See also Tamayo-Reyes*, No. 90-1859, 60 U.S.L.W. at 4341 ("It is hardly a good use of scarce judicial resources to duplicate factfinding in federal court merely because a petitioner has negligently failed to take advantage of opportunities in state-court proceedings.").

During the suppression hearing held in 1985, the state court had all the pertinent parties and evidence before it to consider any claim concerning the voluntariness of the respondent's statements. Where, as here, the respondent had every opportunity to litigate any potential claims of voluntariness in state court but failed to do so, the State should not be disadvantaged years later by being (1) required to marshal limited prosecutorial resources in federal court in order to defend the presumptively valid conviction, *or* (2) denied the opportunity to develop subsidiary facts in the state forum on an issue which would be entitled to the traditional presumption of correctness on federal habeas review. The record clearly establishes that the state court never denied respondent Williams a full and fair opportunity to litigate any claims of voluntariness had he decided to present them in state court. The anomaly is that if this case had instead arisen in the federal forum and respondent had failed to present the voluntariness claim, the claim may have been deemed waived under Fed. R. Crim. P. 12(f). *See United States v. Wilson*, 895 F.2d 168, 172-73 (CA4 1990); *see also United States v. Campbell*, 935 F.2d 39, 43-44

(CA4 1991), *cert. denied*, 112 S.Ct. 348, 116 L.Ed.2d 287 (1991). In contrast, the State of Michigan is compelled to expend further state resources in federal court on this issue more than seven years after the 1985 statements in issue.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the decision of the court below be reversed.

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